L.N. 236 of 2004

ENVIRONMENT PROTECTION ACT
(CAP. 435)

Trade in Species of Fauna and Flora Regulations, 2004

BY virtue of the powers conferred by articles 6,9, 10 (2) and 11 of the Environment Protection Act, 2001, the Minister for Rural Affairs and the Environment has made the following regulations:-

1. The title of these regulations is the Trade in Species of Fauna and Flora Regulations, 2004. Citation.

2. (1) In these regulations, unless the context otherwise requires:- Interpretation.

"the Act" means the Environment Protection Act;

"the Community" means the Community established by the Treaty establishing the European Community;

"import" means introduce into the Community;

"Principal Regulation" means Council Regulation (EC) No. 338/97 [1] on the protection of species of wild fauna and flora by regulating trade therein;

"Subsidiary Regulation" means Commission Regulation (EC) N0. 1808/2001[2] on the implementation of Council Regulation (EC) No. 338/97 on the protection of wild species of fauna and flora by regulating trade therein;

"Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington 1973);

"specimen" shall bear the definition used in the Principal Regulation and shall also include any species, whether alive or dead, any part or derivative thereof, as well as any goods which appear from an accompanying document, the packaging, mark

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[1] OJ No. L 61, 3.3.1997, p.1
[2] OJ No. L250, 19.9.2001, p.1

or label or from other circumstances to be or to contain parts or derivatives of animals or plants of those species the import, export, re-export whereof or the possession thereof is prohibited, restricted or controlled in accordance with the provisions of regulation 6.

(2) For the purposes of these regulations, references to a permit or certificate are references to any of the following-

(a) an import permit of the kind referred to in Article 4 of the Principal Regulation;

(b) an export permit or re-export certificate of the kind referred to in Article 5 of the Principal Regulation;

(c) a certificate of any of the kinds referred in Article 10 of the Principal Regulation;

(d) a certificate of the kind referred to in Article 18 of the Subsidiary Regulation;

(e) a label of the kind referred to in Article 7 (4) of the Principal Regulation;

(f) in so far as, in accordance with Article 43 of the Subsidiary Regulation, reliance may be placed on a permit or certificate issued under Council Regulation (EEC) No. 3626/82[3] and Commission Regulation (EEC) No. 3418/83[4].

(3) Unless the context otherwise requires, expressions used in these regulations and which are also used in the Principal or Subsidiary Regulations, shall have the meaning they bear in those Regulations.

Management Authority.

3. (1) The Malta Environment and Planning Authority is designated as the Management Authority for the purpose of Article IX of the Convention and Article 13 (1) of the Principal Regulation.

(2) The Management Authority shall have those rights listed in Article 25 of the Act as well as the power to seize any specimen found in Malta.

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[3] OJ No. L 384, 31.12.82, p.1
[4] OJ No. L344, 7.12.83, p.1

Scientific Authority.

4. (1) The Minister responsible for the Environment shall appoint a Scientific Authority for the purposes of Article IX of the Convention and Article 13 (2) of the Principal Regulation.

(2) The Scientific Authority shall also advise the Minister on the implementation of article 9 of the Act in relation to the protection of biodiversity.

Import, export, re-export of any specimen.

5. Any person seeking to import, export, re-export any specimen, even if it is not listed in the Annexes to the Principal Regulation, shall apply in writing to the Management Authority on forms made available for the purpose by that Authority.

Species endangering biological identity, ecosystems or other species.

6. (1) The Scientific Authority and the Management Authority shall advise the Minister responsible for the Environment to prohibit the import, export or re-export in or possession of any species of fauna and flora if in their opinion, or in the opinion of any of them, such import, export, re-export or possession would endanger the biological identity or any ecosystem or any species of fauna and flora of Malta.

Responsibility of the individual.

(2) It is the responsibility of the person, who is seeking to import or is in possession of any live specimen, to obtain the necessary information from the Management Authority, in order to establish whether such specimen is of any species referred to in paragraph (1).

Species protected in other countries.

(3) The import of any species which is protected at the country of origin, even if it not listed in the Annexes to the Principal Regulation, and even if that country of origin is not a party to the Convention, shall require an export authorization from that country.

Documentary evidence.

7. Any person who has in his possession any specimen the import of which is subject to these regulations shall retain in his possession and for such time as that specimen remains in his possession, all permits, certificates and licences relative to the import of that specimen.

Offences.

8. (1) Any person who shall:

(a) import into or export or re-export from the Community specimens without the appropriate permit or certificate or with a false, falsified or invalid permit or certificate or one altered without authorization by the issuing authority; or

(b) fail to comply with the stipulations specified on a permit or certificate used in accordance with the Principal Regulation; or

(c) make false declarations or knowingly provide false information in order to obtain a permit or certificate; or

(d) use a false, falsified or invalid permit or certificate or one altered without authorization as a basis for obtaining a Community permit or certificate or for any other official purpose in connection with the Principal Regulation; or

(e) make no import notification or a false import notification; or

(f) ship live specimens not properly prepared so as to minimize the risk of injury, damage to health or cruel treatment; or

(g) use specimens of species listed in Annex A of the Principal Regulation other than in accordance with the authorization given at the time of issuance of the import permit or subsequently; or

(h) trade in artificially propagated plants contrary to the provisions laid down in accordance with Article 7(1)(b) of the Principal Regulation; or

(i) ship specimens into or out of or in transit through the territory of the Community without the appropriate permit or certificate issued in accordance with the Principal Regulation and, in the case of export or re-export from a third country party to the Convention, not in accordance therewith or without satisfactory proof of the existence of such permit or certificate; or

(j) purchase, offer to purchase, acquire for commercial purposes, use for commercial gain, display to the public for commercial purposes, sale, keep for sale, offer for sale or transport for sale of specimens in contravention of Article 8 of the Principal Regulation; or

(k) make use of a permit or certificate for any specimen other than one for which it was issued; or

(l) falsify or alter any permit or certificate issued in accordance with the Principal Regulation; or

(m) fail to disclose rejection of an application for a Community, import, export or re-export permit or certificate in accordance with Article 6 (3) of the Principal Regulation; or

(n) fail to apply in writing to the Management Authority in accordance with regulation 5 of these regulations; or

(o) import, export, re-export in or possess any specimen of any species in contravention of regulation 6 of these regulations; or

(p) fail to retain in his possession any permits, certificates and licences in accordance with regulation 7 of these regulations,

shall be guilty of an offence against these regulations.

Penalties.

(2) Any person who commits an offence against these regulations shall, on conviction be liable to a fine (*multa*) of not less than two hundred Malta liri Lm200 but not exceeding two thousand Malta liri Lm2000 or to imprisonment for a period of not less than one month but not exceeding two years, or to both such fine (*multa*) or imprisonment.

Applicability of the Criminal Code.

(3) The provisions of article 28A of the Criminal Code and the provisions of the Probation of Offenders Act, shall not be applicable in respect of any offence against the provisions of these regulations.

(4) The provisions of article 23 and of subarticle (1) of Article 30 of the Criminal Code shall, *mutatis mutandis*, apply to proceedings in respect of offences against these regulations, so however that the disqualification from holding or obtaining a warrant, licence, permit or authority shall in no case be less than one year.

(5) Notwithstanding the provisions of article 370 of the Criminal Code, the Court of Magistrates (Malta) and the Court of Magistrates (Gozo), as the case may be, shall be competent to try all offences against these regulations, and proceedings shall be taken before the said courts and shall be in accordance with the provisions of the said Code regulating the procedure before such courts as Courts of Criminal Judicature.

(6) Notwithstanding the provision of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgement given by the Courts of Magistrates (Malta) or the Court of Magistrates (Gozo), in respect of proceedings arising out of the provisions of these regulations.

(7) The court may give such orders it deems appropriate, concerning the keeping, re-export or suppression of any specimen, including interim measures during the pendency of any proceedings, in conformity with the provisions of the Convention and the Principal Regulation, and it may also order that the expenses of such keeping, re-export or suppression be borne by the person found guilty of an offence under these regulations.

Civil damage.

9. Nothing in these regulations shall be deemed to affect the provisions of article 24 of the Act.

Repeal of L.N. 19 of 1992.

10. The Trade in Species of Fauna and Flora Regulations, 1992 are hereby being repealed.

Ippubblikat mid-Dipartiment ta' l-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*

Prezz 24c – *Price 24c*